IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

Letters Patent Appeal No.165/2007 in Writ Petition No.2172/1993

(Subhash s/o Bhaurao Dike Vs. Amravati District Supervision Co-op. Society Ltd., Amravati and another)

| Office Notes, Office Memoranda of Coram appearances, Court's orders or directions and Registrar's orders. | Court's or Judge's Orders |
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CORAM : A.P. LAVANDE & R.V. MORE, JJ.
DATED : 20/07/2007

Heard Mr. Ingley, learned counsel for the appellant.

By this appeal, the appellant takes exception to the judgment and order dated 27.4.2005 allowing Writ Petition No.2172/1993 filed by respondent no.1 challenging order dated 22.6.1993 passed by the Divisional Joint Registrar, Co-operative Societies, Amravati allowing appeal filed by the appellant herein and directing reinstatement of the appellant.

Respondent No.1 is the Co-operative Society duly registered under the provisions of Maharashtra Co-operative Societies Act, 1960 (herein referred to as “the Act”). The appellant was working as Secretary with respondent no.1. Respondent no.1 by order dated 5.5.1993 terminated the services of the appellant for

proved misconduct by misappropriation of certain amounts. Against the order of termination, the appellant preferred appeal to the Divisional Joint Registrar, Cooperative Societies, Amravati who held that misappropriation was proved. He further held that the misappropriation was temporary in nature and the fact that service conditions of Secretary were very poor and they were drawing meagre salary held that punishment of dismissal of the appellant from the service was very harsh. Consequently, he granted relief of reinstatement by setting aside the order of dismissal dated 5.5.1993 with further direction that the petitioner society may impose any other punishment upon the appellant. The said order dated 22.6.1993 passed by the Divisional Joint Registrar was challenged by respondent no.1 by filing Writ Petition No.2172/1993. The learned Single Judge of this Court by judgment and order dated 27.4.2005 held that the punishment of dismissal from the service was not shockingly disproportionate having regard to the nature of the charge proved against the appellant. The learned Single Judge held that although misappropriation was in respect of minor amount of Rs. 1809/-, the fact remained that the same amount was deposited by him in the account of the said member almost after six years. The learned Single Judge held that

considering the nature of the duty the misconduct was grave and serious in nature and, therefore, the punishment of dismissal was appropriate. The appellant has challenged the judgment and order of the learned Single Judge by filing present Letters Patent Appeal.

Mr. Ingley, learned counsel for the appellant submitted that the Divisional Joint Registrar in his judgment dated 22th June 1993 had correctly appreciated the material on record and correctly come to the conclusion that the penalty of dismissal of the appellant from the service was very harsh. He further submitted that the finding of Divisional Joint Registrar of Cooperative Societies cannot be faulted and, therefore, learned Single Judge has not properly exercised jurisdiction in interfering with the judgment and order passed by the Divisional Joint Registrar. He further submitted that considering the amounts of misappropriation by the appellant, the penalty of termination imposed by respondent no.1 which has been upheld by the learned Single Judge is totally disproportionate and as such interference is called for in this appeal against the judgment and order passed by the learned Single Judge . He further submitted that in the event the impugned order is not set aside, the family members of the appellant would suffer, on account of

termination of services of the appellant. He therefore submitted that this is a fit case in which impugned judgment and order passed by the learned Single Judge deserves to be quashed and set aside.

Having considered the submissions made by Mr. Ingley, learned counsel for the appellant and having perused the records, we find no merit in the present appeal. In our opinion, learned Single Judge was absolutely justified in holding that in view of proved misappropriation, may be of small amounts, by the appellant, the respondent no.1 was justified in passing order of termination of service of the appellant. At the relevant time the appellant was serving as Secretary of the Society and his duty was to collect amounts from the members and deposit then in the respective accounts. The appellant was, therefore, holding a position of trust vis-a-vis respondent society. Therefore, in view of proved misconduct of misappropriation of amounts of the society, respondent no.1 was entitled to terminate the services of the appellant. We fail to appreciate the findings recorded by the Divisional Joint Registrar that the punishment of dismissal of the appellant from the service was not justified since the appellant was setting meagre salary at the relevant time and further that he had repaid the

amounts. In our opinion, the grounds on which the Divisional Joint Registrar allowed the appeal are absolutely untenable in law. Therefore, learned Single Judge was justified in setting aside the order passed by Joint Registrar. Insofar as the argument of Mr. Ingley that on account of termination of the appellant his family would suffer is concerned, we find no merit thereof. An employer cannot be foisted with an employee against whom the charges of misappropriation are proved even in respect of small amounts. We, therefore, find no merit in the present appeal. Hence, the appeal is summarily rejected.

JUDGE JUDGE

A.